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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,606	02/14/2006	Ulrich Rohs	ROHS ET AL -19 PCT	1697

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EXAMINER	
WRIGHT, DIRK	

ART UNIT	PAPER NUMBER
3681	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/529,606	ROHS ET AL.	
	Examiner	Art Unit	
	Dirk Wright	3681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 48-129 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 48-129 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *all to date*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of claim 64, 67, 73, 77, 83, and 91 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 50-101, 105, 111, 112, 117, 118, 120, 121, 127 and 128 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the rejected claims, "and/or" is indefinite because the alternatives are not equivalent, and because not all combinations are disclosed. The term "may be" and "may" does not positively recite the associated subject matter. The term "particularly" also does not positive recited the associated subject matter. The terms "such as" and "able to" are also indefinite for the same reason. In claims 58 and 59, "the coupling element" lacks an antecedent. The term "Trilok" appears to be a trademark and is not permitted in a patent claim because the scope of the term may change over time. In claims 93, 100 and 101 "(Trilok converter 20)" is indefinite because it is contained within parentheses and because it uses a term that appears to be a trademark.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 48, 49, 85-89, 92, and 93, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Rohs '131. It is in the nature of friction drives to transmit power through a thin film of liquid. Ideally, no metal to metal contact occurs. Therefore, all friction drives have a space between their elements for the disposition of traction liquid. Rohs shows cone friction transmission 19, driven by a torque converter 17, with an associated output gearing 50. Rohs

shows another arrangement in figure 3 where the gearing 18 is disposed before the cone friction transmission.

Claim 63 is rejected under 35 U.S.C. 102(b) as being anticipated by Serkh '275. Serkh shows a friction drive transmission with two drive members in the form of pulleys 41 and 42 with a couple element comprising a belt 20. The faces of the pulleys have grooves in them.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 50-59, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohs '131 in view of Fey '399. Fey shows a traction fluid that is controlled for temperature and compression. It would have been obvious to use the compounds of Fey in the transmission of Rohs because it would have been obvious to try a different fluid to improve the performance thereof of the transmission.

Claims 60-63, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohs '131 in view of Cosby '046. Rohs does not show a texture on his cone friction transmission. Cosby shows two kinds of texturing on a cone friction transmission. It would have been obvious to one of ordinary skill in this art to use texturing similar to that used on the Cosby device because it would have been obvious to try such a feature to improve the performance thereof.

Claim 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rohs '131. It would have been obvious to one of ordinary skill in this art to use an electric motor, or any other power source, to drive the transmission.

Claims 65, 66, and 68-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serkh '275 in view of Schmidt '661. Serkh does not show a CVT with plural power paths. Schmidt shows one with a belt type CVT 16, plus numerous clutches and differential 10.It would have been obvious to try the CVT of Serkh in the transmission of Schmidt because no modification to Serkh or Schmidt would be required to achieve the combination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 48-129 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 69-204 of copending Application No. 10/529,605. Although the conflicting claims are not identical, they are not patentably distinct

from each other because the entire scope of the claims of this application is contained within the claims of application '605.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Prior Art Discussed

The examiner has considered the references cited by applicant in his Information Disclosure Statements filed February 14, 2006, May 26, 2006, and November 13, 2007. None of the references show all of the features of the claimed invention, nor do they show that it would have been obvious to one of ordinary skill in this art at the time the invention was made to combine features therefrom to create the claimed invention.

The references cited by the examiner are deemed pertinent to applicant's disclosure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dirk Wright whose telephone number is 571-272-7098. The examiner can normally be reached on Monday through Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dirk Wright
Primary Examiner
Art Unit 3681

DW
Sunday, December 02, 2007